

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KALEO PAIAINA,
Charging Party/Appellant,

HRB CASE NO.0210076

-v-

FINAL AGENCY DECISION

POTEET CONSTRUCTION, INC.,
Respondent/Appellee.

Charging Party, Kaleo Paiaina, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of disability and reasonable accommodation. Following an informal investigation, the Department determined that reasonable cause supported Paiaina's allegations. The case went before the Office of Administrative Hearings of the Department of Labor & Industry, which held a contested case hearing, pursuant to Mont. Code Ann. § 49-2-505. The hearing officer issued a Decision on August 4, 2022. The hearing officer entered judgment in favor of Poteet Construction, Inc., and determined that discrimination did not occur.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on November 18, 2022. Eric E. Holm, attorney, appeared and presented oral argument on behalf of Paiaina. Nicole L. Siefert, attorney, appeared and presented oral argument on behalf of Poteet Construction, Inc..

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of

law. Mont. Code Ann. § 2-4-621(3). The commission reviews conclusions of law for correctness and to determine whether the hearing officer misapplied the law to the facts of the case. The commission reviews findings of fact to determine whether substantial evidence exists to support the particular finding. Admin. R. Mont. 24.9.123(4)(b); *Schmidt v. Cook*, 2005 MT 53, ¶ 31, 326 Mont. 202, 108 P.3d 511. “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more than a mere scintilla of evidence but may be less than a preponderance.” *State Pers. Div. v. DPHHS*, 2002 MT 46, ¶ 19, 308 Mont. 365, 43 P.3d 305.

DISCUSSION

Before the Commission, Mr. Paiaina argues the hearing officer failed to acknowledge the case was based on more than just Poteet’s response to an inquiry by the Unemployment Insurance Division (“UI Division”) in regards to Mr. Paiaina’s situation. Mr. Paiaina further argues the hearing officer erred when she considered only unemployment insurance law and not whether Mr. Paiaina had been terminated by Poteet.

Before the Commission, Poteet argues the hearing officer did not err, and that there is no evidence of discrimination in this case. Poteet argues it properly reported Mr. Paiana’s employment status to the UI Division and continued to offer Mr. Paiaina work after the specific job he was on concluded, but that Mr. Paiana was unable or unwilling to return to work.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer’s conclusions of law are correct. The Commission finds that although Mr. Paiaina argued the adverse employment action was a series of events, rather than just a single event (i.e. the report to the UI Division) as Poteet argues, that the hearing officer did not err in determining no adverse employment action occurred. The Commission determines that while the hearing officer erred in not correctly identifying the adverse unemployment action as a series of events, the hearing officer did properly analyze all of

Mr. Paiaina's claims, including that there were a series of events in which Mr. Paiaina believed Poteet had discriminated against him and reached the correct result. The Commission declines to modify the findings of fact or conclusions of law reached by the hearing officer.

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is AFFIRMED IN ITS ENTIRETY. Therefore, the Commission enters a Final Agency Decision of the affirmed order.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections Mont. Code Ann. §§ 2-4-702 and 49-2-505.* This review must be requested within 30 days of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. Mont. Code Ann. § *Section 2-4-702(2).*

DATED this 21st day of February 2023.



Peter M. Damrow, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 21st day of February 2023.

Eric Holm
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A handwritten signature in cursive script that reads "Annah Howard".

Annah Howard, Legal Secretary
Montana Human Rights Bureau